

1944

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by, the person guilty of the act described in (a) or (b) shall be deemed guilty of murder in the first degree. As amended Laws 1953, c. 28274, § 1.

Library references

- Homicide § 18(1).
C.J.S. Homicide § 21.
11 F.L.P. Homicide, §§ 29, 75.

782.07 Manslaughter

Law Review Commentaries

- Manslaughter. Edward Walterman, 10 Miami L.Q. 199 (Winter-Spring 1956).
Manslaughter by automobile. 4 U. Fla. L.R. 360 (Fall 1951).

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1. Construction and application

The elements of "culpable negligence" within meaning of this section, are the omission to do something which a reasonable, prudent, and cautious man would do, or the doing of something which such a man would not do under the circumstances surrounding the particular case. Fort v. State, 91 So.2d 637.

Contemporaneous construction and long acquiescence by legislature in a particular construction are entitled to great weight. Johnson v. State, 91 So. 2d 185.

Statutes must be so construed as to avoid absurd results. Id.

Acquittal of motorist in prosecution for manslaughter of one of two boys killed when motor scooter on which they were riding was struck by motorist's automobile based on culpable negligence did not bar on ground of "former jeopardy" a subsequent prosecution of motorist on charge of manslaughter for killing the other boy by operation of motor vehicle while intoxicated. McHugh v. State, 160 Fla. 823, 36 So.2d 786, certiorari denied 69 S.Ct. 640, 336 U.S. 918, 93 L.Ed. 1081.

The offenses of reckless driving and operating a motor vehicle while under influence of intoxicating liquor where a conviction is had thereon are not such parts of a manslaughter charge by culpably negligent operation of automobile which stem out of the same occurrence so as to bar a prosecution for manslaughter. State v. Bacom, 159 Fla. 54, 30 So.2d 744, 172 A.L.R. 1050.

4. Elements in general

Acts necessary to a finding of guilt under a charge of manslaughter are not confined to acts of omission but can be acts of commission. Sinnefa v. State, App., 100 So.2d 837.

A person who, by actual assault or threat of violence, causes another acting upon reasonable fear or apprehension to do an act resulting in physical or corporeal injury causing his death, is responsible for the homicide. Whaley v. State, 157 Fla. 593, 26 So.2d 656.

5. Manslaughter and murder distinguished

In prosecution for unlawful homicide, where defendant had an altercation with deceased and thereafter went home and armed himself and went in pursuit of deceased and jury found defendant guilty of murder in the second degree, trial court's action in reducing the offense to manslaughter was error. Mixon v. State, 59 So.2d 38.

6. Passion, killing in

Where deputy sheriff attempts to arrest party in home without warrant, arrested party may use reasonable force proportionate to injury attempted to effect his escape but he is not permitted to use more, and if from result of sudden passion he uses more, offense is manslaughter, though premeditation results in murder. Alday v. State, 57 So. 2d 333.

"Passion" is the state of mind produced when the mind is powerfully acted upon and influenced by something external to itself and is one of the emotions of the mind known as anger, rage, sudden resentment, or terror, but for passion to constitute a mitigation of murder to manslaughter it must arise from legal provocation. Febre v. State, 153 Fla. 853, 30 So.2d 367.

Whoever kills a trespasser in hot blood and heat of passion is guilty of manslaughter. Pearce v. State, 154 Fla. 656, 18 So.2d 754, certiorari denied 324 U.S. 851, 65 S.Ct. 683, 89 L.Ed. 1410.

10. Accessories

In prosecution for felony of accessory before fact of felony of manslaughter, where jury found defendant guilty as charged, it was error to adjudge co-defendant guilty as accessory before fact to third degree murder. Johnson v. State, 91 So.2d 185.

13. Negligence, death from

Acts of defendants, who were unaware of deceased's heart condition and who intentionally pushed victim with their hands, did not amount to reckless disregard of human life or of deceased's safety, and did not constitute "culpable negligence" under this section. Tipton v. State, 97 So.2d 277.

Evidence sustained manslaughter convictions of driver of truck involved in fatal accident and his companion, who had custody of truck and permitted driver to drive truck though he was allegedly intoxicated. Taylor v. State, 83 So.2d 879.

"Culpable negligence" means negligence of a gross and flagrant character evincing reckless disregard of human life, or of safety of persons exposed to its dangerous effects, or such want of care as would raise presumption of conscious indifference to consequences, or shows wantonness or recklessness or grossly careless disregard of safety and welfare of public or reckless indifference to rights of others. Tongay v. State, 79 So.2d 673.

The "culpable negligence" necessary to justify conviction for manslaughter by automobile must be of a kind sufficient at least to sustain an action for civil liability under automobile guest statute. Miller v. State, 75 So.2d 312.

To constitute manslaughter by "culpable negligence", death must result from conduct of a gross and flagrant character, evincing reckless disregard of human life, or of safety of persons exposed to its dangerous effects, or there must be entire want of care which would raise presumption of conscious indifference to consequences or which shows wantonness or recklessness or grossly careless disregard of safety and welfare of public, or that reckless indifference to rights of others which is